Case No. A173289

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT DIVISION TWO

SAM CLEARE, SARAH KINCAID, JEREMIAH ROMM, AND HILDA CRISTINA HUERTA

Appellants and Petitioners

vs.

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, KENNETH CHRIS HURST, WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, JAMELA SMITH-FOLDS, DEMETRIO GONZALEZ HOY, OTHEREE CHRISTIAN, MISTER PHILLIPS, AND LESLIE RECKLER

Appellees and Respondents

On Appeal From the Superior Court for the State of California, County of Contra Costa, Case No. N24-1353
Hon. Benjamin T. Reyes II
Hon. Terri Mockler

APPELLANTS' OPENING BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

In accordance with California Rules of Court, rule 8.208, Appellants and Petitioners Sam Cleare, Sarah Kincaid, Jeremiah Romm, and Hilda Cristina Huerta hereby respectfully submit their Certificate of Interested Entities or Persons.

Appellants and Petitioners know of no entity or person that must be listed under rule 8.208, subd. (e)(1) or subd. (e)(2).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

STATE CASES

STATE STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

Public education is a fundamental constitutional right for all California students. (*Serrano v. Priest* (1971) 5 Cal. 3d 584, 608–609). To safeguard this right, the Legislature has established a comprehensive teacher certification regime, overseen by an expert agency, the Commission on Teacher Credentialing (CTC), so that every public-school classroom has a legal state-approved teacher. In 2004, the Legislature went further, creating additional substantive rights for students, and a special, fast-track "*Williams*" complaint procedure, which requires that, within 30 working days, districts "remedy" valid complaints about teacher vacancies with a single, year-long, certificated teacher. (Ed. Code § 35186.)

In the decision below, the trial court held that—despite the Legislature's mandate to provide all students with legally authorized teachers—the respondent school district, West Contra Costa Unified School District (the "District"), actually need not provide all its students with year-long certificated teachers if the District believes that would be too difficult. The trial court's decision appears to be the first to ever hold that the Legislature's

command for Districts to use only certificated teachers does not mean what it says.

The trial court held, moreover, that the District could decide to disregard the law unilaterally, even though the Legislature tasked an expert agency, the CTC, with evaluating claims from school districts that they cannot find certificated teachers. The result makes no more sense than a court concluding that a hospital can hire uncertified nurses just because there is a nursing shortage. Indeed, under the lower court's logic, nothing would prevent a school district from staffing classrooms with anyone at all—parents, undergraduates, classroom aids without college degrees—if the district concludes that it is too difficult to find individuals that are authorized by the Education Code to teach.

The Supreme Court has held that the "loss of *six weeks* of instruction would cause serious, irreparable harm to … students and would deny them their 'fundamental right to an effective public education' under the California Constitution." (*Butt v. State of California* (1992) 4Cal.4th 668, 674 [italics added].) Here, some of the classrooms at three of the District's most economically disadvantaged schools have lacked a legally

sanctioned teacher—or even *any* teacher—for *two school years*. This deprivation of students' fundamental constitutional and statutory rights should not be permitted to continue for yet another school year. Just as importantly, the trial court's decision should be reversed to ensure that other districts across the State do not conclude that they too can ignore the mandate of providing a qualified teacher to every student.

Teachers are the single most important in-school factor affecting student outcomes. And yet the District freely admits that it continues to leave classrooms without a certificated teacher. The District insists that it will continue to use substitutes to staff classrooms at these disadvantaged schools and across the district when it sees fit, even though it is illegal to assign a substitute to a classroom for more than 30 (or sometimes 60) days due to their lack of teaching qualifications. California law instead requires that each classroom be assigned a single, designated, certificated teacher for the entire year.

The trial court approved of this conduct based solely on the District's blanket assertion that it was "impossible" to provide certificated teachers due to "a statewide teacher shortage." This was a fundamental legal error. There is no impossibility defense

to the District's statutory obligations to provide a single, designated, certificated teacher in each classroom. The Supreme Court has warned courts not to create exceptions to statutory obligations absent a clear legislative intent to provide such a defense. (*Nat. Shooting Sports Found., Inc. v. State* (2018) 5 Cal.5th 428, 433.)

Nothing in the statutory text suggests the availability of the District's impossibility defense. To the contrary, the Legislature created a comprehensive regime, managed by an expert agency, that provides schools districts numerous *legal* alternatives if a certificated teacher cannot be found through standard recruiting efforts. These options include using interns, reassigning fully credentialed teachers, or utilizing the *legal* safety valve of obtaining waivers from the CTC, which permit otherwise unqualified persons to be certified for a limited period of time. It would make no sense for the Legislature to enact this comprehensive regulatory regime if it intended that districts could avoid that whole system and the corresponding state oversight by asserting impossibility to a court.

The trial court's decision also improperly usurps and undermines the role of the CTC, which the Legislature has

tasked with evaluating school districts' claims that they cannot find qualified teachers. The CTC has the knowledge, expertise, and data to evaluate those claims and make policy decisions balancing the needs of students with the burden on districts. This is not a role for the courts, as illustrated by the decision below, where the trial court relied on its personal observations about teacher shortages in the 1970s and its own views about teacher recruitment over the years. (RT035.) If the District believes it impossible to find certificated teachers, it can make that case to the CTC and seek a waiver to certify its otherwise unqualified personnel.

Moreover, even if an impossibility defense existed in these statutes (which it does not), the trial court erred in concluding that the District had proven that it was impossible to comply with the statutory regime. Most obviously, the Education Code permits the District to fill vacancies by reassigning credentialed teachers from administrative and other non-classroom roles. (Ed. Code § 44258.3, 35035(e).) The District claimed at the hearing that its contract with the teachers union prohibited involuntary reassignments. The trial court accepted the District's claim that it lacked the legal capacity to reassign teachers. But in response

to Appellants' motion for a new trial, the District conceded that claim was false. Nothing in the contract with the teachers union precludes involuntary transfers, and the District regularly reassigns teachers to address vacancies.

Nor does the District lack teachers available to reassign. In fact, the District has reassigned approximately 70 teachers over the past two years to cover classroom vacancies and has identified at least another 21 candidates for reassignment.

The decision below should be reversed and the trial court should be instructed to issue a writ of mandate requiring the District to comply with its legal obligations. Specifically, a writ should issue requiring the District to provide a single, year-long, certificated teacher in every classroom and to halt its practice of using unauthorized substitutes to cover vacancies. If the District has difficulty recruiting teachers, it can pursue legally authorized certification alternatives like reassignment of teachers from other roles, interns, emergency permits, or waivers from the CTC. The District has discretion to employ the many alternatives available to it under the state's certification framework. What this District (and every other district) cannot be permitted to do is unilaterally decide to ignore its mandatory obligations to staff all classrooms

with a single, year-long, certificated teacher, including classrooms at its most underprivileged schools.

II. BACKGROUND & PROCEDURAL HISTORY

A. Regulatory Background

1. The Legislature Has Mandated that Every Classroom Has a Teacher With a Valid Authorization.

California requires all teachers in California public schools to have the legal authorization or "certification" to teach in a classroom, as specified in the Education Code and by the CTC. Education Code section 44065(a)(1) mandates that "any person employed . . . by a school district . . . in a position in which 50 percent or more of his or her duties . . . consist of [instructional programs for students] . . . *shall hold a valid teaching or service credential* as appropriate, whichever is designated in regulations adopted by the Commission on Teacher Credentialing." (Ed. Code § 44065(a)(1) [italics added]; see also Ed. Code § 44830(a) [Districts "shall employ for positions requiring certification qualifications, only persons who possess the qualification for those positions prescribed by law."].)

While the Education Code and the CTC intend each classroom to be staffed with a "fully prepared teacher"—i.e., one

who has "completed a teacher preparation program" (Ed. Code § 44225.7(e))—the Legislature has provided a hierarchy of legally authorized alternatives for situations where such a teacher is not available. (Ed. Code § 44225.7.) These alternatives allow for the CTC to hold districts and teachers accountable and assure a minimum level of teaching quality, even in the face of a potential teacher shortage.

For example, if no "fully prepared" teacher can be assigned to a classroom, the district must first attempt to assign a teaching "intern." (Ed. Code § 44225.7(a)(1).) If no intern is available, the district can assign a candidate scheduled to complete preliminary credential requirements within six months. (Ed. Code §§ 44225.7(a)(2); 44325.)[1] A district can also use "local teaching assignments," where a "fully prepared" teacher is assigned outside of their authorized subject matter. (Ed. Code

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[1] To earn a preliminary credential, teachers need a Bachelor's Degree, an accredited preparation program with 600 hours of student teaching, a background check, required subject matter tests or coursework, passage of an assessment of teaching performance, U.S. Constitution training, and a program recommendation. (Ed. Code § 44259; Cal. Code Regs., Tit. 5, § 80413; *see also*, CTC, *Preliminary Multiple Subject and Single Subject Credential Program Standards and Teaching Performance Expectations* (2024) p. 2 <https://tinyurl.com/2s3dtxy6> [as of June 25, 2025].)

§ 44258.3.) Districts use this authority to reassign teachers for "special assignment" roles in classrooms lacking a legally authorized teacher, even if the teacher on special assignment does not have the credential for the subject matter at issue. (1 AA033.) Districts can also involuntarily transfer fully credentialed teachers to cover a vacancy, including teachers in "special assignment" or other non-classroom roles. (Ed. Code. § 35035(e).)

If none of these options is available, districts can staff classrooms by obtaining "emergency-style" teaching permits by petitioning the CTC. (Cal. Code Regs., Tit. 5, § 80021 [short term staff permits]; Cal. Code Regs., Tit. 5, § 80022 [teaching permits for statutory leave]; Cal. Code Regs., Tit. 5, § 80021.1 [provisional internship permits].)

As explained further below, the Legislature has also created a final "safety valve" option by empowering the CTC to grant a waiver from these Education Code provisions if a district demonstrates that it cannot find teachers under any of these legal authorizations. (Ed. Code § 44225.7(b); see also Ed. Code § 44225(m)(1).) (See *infra*, at 54–59.)

What is not legally permissible is staffing a classroom with a substitute in lieu of a teacher for an extended period. Substitutes are legally certified to serve in any one classroom for no more than 30 days (or 60 days for "career" substitutes) in a given school year. (Ed. Code § 44830(a); Cal. Code Regs., Tit. 5, §§ 80025; 80025.1(a)(4).) This strict temporal limitation exists because all that is required for a 30-day Substitute Teaching Permit is a Bachelor's Degree. (Cal. Code Regs., Tit. 5, §§ 80025; 80025.1(a)(4).) Substitutes are not required to have any training in pedagogy or even the subject matter of their classroom.

As Dr. Mary Sandy, Executive Director of the CTC, explains, "[s]ubstitutes . . . are not trained in how to teach (e.g., lesson planning, grading, differentiated learning styles, classroom management, basic legal obligations, etc.), much less on how to teach the particular subject matter of the class they are filling in for." (2 AA368.) Substitutes also are not required to have any training in handling "the specialized needs of the students found in most California public school classrooms, particularly special education students and English Learners." *(Ibid.*)

Districts once abused the availability of temporary substitute certifications by using "rolling substitutes," i.e., a series of 30-day substitutes to staff classrooms for the whole school year. As part of the *Williams* settlement legislation discussed below, the Legislature specifically banned this practice, requiring that classrooms be assigned a single, designated certificated teacher authorized to teach for the entire year. (Ed. Code § 35186(h)(3).)

2. The *Williams* Statute Requires Districts to Immediately Remedy Complaints of Teacher Vacancies with Year-long Certificated Teachers.

To protect the right to public education, and in connection with a landmark statewide settlement in *Williams v. State of California*, the Legislature enacted a special remedial process for three essential components of a quality education: qualified, permanent teachers, safe facilities, and basic instructional materials. (Ed. Code § 35186.) Under the *Williams* process, anyone can submit an administrative complaint—known as a *Williams* complaint—to a school district identifying a failure in any of these three areas. The district must then address and resolve valid complaints within a series of statutory timeframes.

In particular, in response to a "valid" complaint about a classroom without a single year-long "certificated" teacher, the statute requires that the principal (or designee of the district superintendent) "*shall remedy*" the vacancy "within a reasonable time period but not to exceed 30 working days." (Ed. Code § 35186(b), italics added.) The district must also provide the complainant with a written response, explaining the remedial steps it has taken, within 45 working days. (*Ibid.*)

A teacher vacancy is not considered remedied unless the district fills the vacancy with someone who is (1) "certificated" and (2) serves as the "single designated . . . employee" assigned for the "entire year." (Ed. Code § 35186(h)(3).) To be "certificated" means to be authorized by the Education Code to teach in that classroom, e.g., a full or preliminary California teaching credential, an intern credential, a one-year short-term teaching permit, a one-year waiver, or some other legal authorization. (See Ed. Code § 44830.)

3. The Legislature Has Empowered the CTC and State Board of Education to Grant Waivers of Education Code Requirements.

The Legislature has given the CTC and the State Board of Education (SBE) broad authority to grant "waivers" of a district's

obligations under the Education Code. For example, if a district demonstrates that it cannot staff classrooms under any of the various certification options described above, either for a particular teacher or for the district as a whole, the district may seek a waiver from the CTC of the certification requirements. (Ed. Code § 44225(m)(1).)

One standard kind of waiver the CTC offers is called a "variable term waiver," which allows a district to use individuals who were not otherwise certificated to cover assignments for an entire school year while looking for a fully credentialed teacher. (1 AA198–199.) Under the agency guidelines, a variable term waiver generally requires the district to show that it tried to recruit a fully credentialed teacher for the assignment, that the candidate for whom a waiver is sought is the "best available candidate" for the position, and that the candidate commits to seeking the appropriate credential. (1 AA200.)

While a "variable term waiver" is one program established by the CTC, the CTC has broad authority to waive certification provisions of the Education Code. The CTC can provide exemptions for entire regions "with a severely limited ability to develop personnel" or any "temporary exemptions when deemed

appropriate by the commission." (Ed. Code § 44225(m)(1).) Thus, a school district unable to qualify for a "variable term waiver" can apply for a more general temporary exemption from the CTC or can seek a waiver of the requirements for a variable term waiver itself. (2 AA369, 2 AA370 ["[T]he Commission's waiver authority is broad and includes the ability to waive some certification provisions of the Education Code and CTC regulations, including those relied on for a standard variable term waiver such as the requirement the candidate enroll in a teacher preparation program."].)

In addition to and separate from the CTC's waiver authority, the SBE can waive almost any other provision of the Education Code—including a district's obligations to immediately remedy teacher vacancies under the *Williams* process. Education Code section 33050(a) provides that a school district "may request the state board to waive all or part of any section of [the Education] code or any regulation adopted by the state board," with certain exceptions not applicable here. Accordingly, even if a district could not obtain a needed waiver from the CTC, it could still ask the SBE for a waiver of its obligations under *Williams* to

remedy any failure to provide a single, certificated, year-long teacher.

The waiver process allows expert agencies to maintain oversight and accountability over districts who are seeking an exemptions from the Education Code. For example, before granting a waiver the SBE must ensure that the waiver allows "[t]he educational needs of the pupils" to be "adequately addressed" and "pupil or school personnel protections" not to be "jeopardized." (Ed. Code § 33051(a).) An annual report to the Governor and Legislature is also required describing "the number and types of waivers requested of the board, the actions of the board on those requests, and sources of further information on existing or possible waivers." (Ed. Code. § 33053.) Such oversight can only occur if school districts are required to petition the agencies for waivers and exemptions of their obligations under the Education Code.

B. Factual Background

1. Appellants' *Williams* Complaints Regarding Teacher Vacancies

Stege Elementary School ("Stege"), Helms Middle School ("Helms"), and Kennedy High School ("Kennedy") have been

plagued by numerous teacher vacancies from Kindergarten to 12th Grade across a wide variety of subjects, including Math, Science, and English and with respect to teachers authorized to teach English Learners and students with disabilities. (1 AA047–067.) For years, the District has "covered" these vacancies with unauthorized substitutes (i.e., substitutes teaching beyond their 30-day authorization), "rolling" substitutes (i.e., a different substitute every 30 days), and/or other teachers trying to cover teacher-less classes on a day-to-day basis in addition to their own classes. (*Ibid.;* see also 1 AA068–085.)

Notably, these three schools have among the highest poverty rates (71–87%) in the District. (1 AA023.) Helms has one of the highest enrollments of English Learners (50%); Kennedy has the lowest graduation rate in the District (62%); and all three are significantly falling behind state Math and English standards. (1 AA023.)

After years of these illegal vacancies, Appellants Cleare, Romm, and Huerta submitted three *Williams* complaints on January 31, 2024, to demand that 12 teacher vacancies at these three schools be staffed with certificated, year-long designated teachers. (1 AA047–067.) As detailed in the complaints and in

the record below, these vacancies have significantly affected students and teachers at these schools.

Appellant Romm described how teacher vacancies have required Helms to teach large, combined classes in a cafeteria, which has had a particularly devastating effect on English learners and new students. (2 AA523.) He also explained other ways in which vacancies harm the most at-needs students. For example, he described one newcomer English-language learner that, due to the vacancies, "couldn't get the necessary support from substitute teachers in her first two years" and therefore "still cannot speak English." (*Id.*)

Appellant Cleare described how students were "crammed into combined classes" which "left students with little space to learn or move around the classroom." (2 AA526.) She recounted efforts to help a "seriously underprepared" substitute across the hall whose "yelling [at his students] would often get so loud" that Cleare would have to shut her classroom door to protect her own students. (*Id.*)

Appellant Huerta attested that she had to substitute teach at Kennedy for another class on a day-to-day basis in addition to her own classroom. (2 AA520.) Because there was no year-long

teacher assigned, there was "no curriculum for [her] to follow" and she couldn't even access the gradebook to give students credit for their work. (*Ibid.*)

The District responded to Appellants' *Williams* complaints on April 10, 2024. (1 AA068–085.) In its response, the District conceded that the complaints were valid and confirmed the existence of all 12 identified vacancies. (1 AA071 ["The District acknowledges it is out of compliance[.]"].) The District confirmed that it "utilized long-term and day-to-day substitutes," claiming it was "unable to fill these vacancies with permanent teachers." (*Ibid.*) The District stated that it would continue to rely on substitutes working beyond their 30-day authorization, ostensibly because of a statewide teacher shortage. (*Ibid.*)

Appellants then appealed the District's refusal to remedy these complaints to the WCCUSD Board of Education. (1 AA091–093.) In response, the District confirmed that it would not take further action to resolve the teacher shortages. The District claimed that its "options for filling the vacancies are limited by the ongoing, statewide teacher shortage" and that it has "considered legal emergency measures" but it has been "unable to remedy all existing teacher vacancies." (1 AA088.) Dr. Camille

Johnson, the District's Associate Superintendent of Human Resources, reiterated in a subsequent meeting, and in other public statements, that the District would continue illegally using substitutes beyond their 30-day authorization to cover vacancies. (1 AA036; 1 AA123; 1 AA152–156.)

C. Proceedings in the Trial Court

1. Appellants' Petition for Writ of Mandate & the District's Response

After it became clear that the District did not intend to remedy their *Williams* complaints, Appellants filed a petition for a writ of mandate on July 19, 2024, under Code of Civil Procedure section 1085, to require the District comply with the law regarding *Williams* and teacher certification in the 12 classrooms for which *Williams* complaints had been filed.[2] (1 AA038; [Ed. Code §§ 44830, 35186].) As relevant to this appeal, the petition requested a writ directing the District to "[t]ake all necessary steps to fill each vacancy identified in the complaints . . . with a single designated certificated employee whose

[2] The petition also sought relief relating to school facilities complaints that are not at issue in this appeal. The trial court denied the writ petition as to those complaints as moot, and Appellants do not appeal from that decision.

assignment complies with applicable state certification laws . . . ." (1 AA040.) The petition further requested that the court "enjoin [the District] from the illegal practice of covering teacher vacancies with long-term substitutes working beyond their legal authorization." (1 AA041.)

Appellants filed a motion for issuance of the writ on August 30, 2024. In that motion, Appellants argued that the District violated its legal duty to ensure that the classrooms at Stege, Helms, and Kennedy were staffed with certificated teachers and to remedy the *Williams* complaints by assigning a single year-long certificated employee to the classrooms for the entire year. (1 AA113–114.)

Within a few weeks of Appellants filing this lawsuit, the District suddenly began addressing some of the 12 vacancies. (1 AA136–137.) The District filled six vacancies by assigning or reassigning fully credentialed teachers, hiring interns, or recalling retired teachers. (2 AA268; 2 AA289; see also, 2 AA374.) The District "addressed" three other vacancies by cancelling the classes altogether. (1 AA136–137.)

Three of the original vacancies still remain to this day, while new vacancies continue to emerge at one or more of the

three schools of concern as the litigation has progressed. (2 AA444–445.). Just as importantly, the District continues to maintain that it will illegally rely on unauthorized substitutes to cover these vacancies and others throughout the District, as it sees fit. (*Ibid.*)

In opposition to the writ petition, the District advanced two basic arguments. First, the District argued that it had discretion to utilize substitutes in violation of the law. The District insisted that the courts are powerless to issue a writ requiring its compliance with the law because the laws at issue impose only "discretionary duties" on school districts. (1 AA144–146.)

Second, the District argued that it had done everything it could to find credentialed teachers but that it was "impossible" to comply with the law due to a teacher shortage. The District says it posted job listings on websites, attended job fairs, relied upon partnerships with Teach for America and universities, and maintained a Teacher in Residency Program—all to no avail. (1 AA154.) The District's evidence on this point was entirely general, however, without any facts relating to the specific vacancies at these three specific schools. (See, e.g., *ibid.*)

Appellants pointed out that even with a supposed teacher shortage, the District could still reassign credentialed teachers from non-classroom roles to fill vacancies, either voluntarily or involuntarily. (2 AA373–74; 1 AA191; 1 AA247; see also Ed. Code §§ 35035(e); 44258.3.) The District responded that it can never reassign teachers involuntarily under its contract—the Memorandum of Understanding ("MOU")—with the teachers union. (1 AA155 ["the MOU with the teachers union requires that the credentialed teacher consent to the assignment or reassignment, including the grade level, subject matter, and school. The District cannot force them to take a reassignment."].) The District insisted that it was thus impossible to fill the position through reassignment given the terms of the MOU, although the District never identified any teachers who had been asked to take over one of the vacancies at issue. (*Ibid.*)

Appellants also noted that the District had not attempted to seek waivers from the CTC or the SBE for the vacancies at issue here. (2 AA280–281.) In response, the District admitted that it had not sought a waiver from the CTC, but argued that the substitutes in question were not eligible for variable term waivers. (2 AA268–269.) It proposed no alternative candidates

who were eligible for a variable term waiver nor did it seek a waiver of the CTC's standard variable term waiver provisions for its proffered candidates. (2 AA445.) The District also did not address its failure to seek a waiver from the SBE regarding its duties under *Williams*.

2. The Trial Court's Denial of the Writ Petition

At a hearing on October 11, 2024, the trial court denied the writ petition based solely on the District's "impossibility" defense. "[W]hat petitioners are asking," the trial court reasoned, "is not really within the ability of the school district to fulfill. You can't make people get credentialed to be teachers." (RT010.) With respect to teacher reassignment, the trial court noted that "[y]ou can't simply take . . . other qualified teachers who are doing different jobs within the school district and force them to be in the classroom," given the terms of the MOU as represented by the District. (RT010–011.)

Appellants' counsel noted that the District was relying on information that was "not in the record." (RT034.) The trial court nonetheless responded that it found the District's arguments persuasive based on the court's own personal

experience: "[T]he shortage of teachers, both credentialed and substitute teachers, is nothing new. I mean, I moved to California in 1973, and in 1973 there was a shortage of teachers. This is chronic." (RT035.) The trial court proceeded to offer a litany of supporting observations—not presented by either side and not supported by anything in the record—about supposed teacher preferences and the East Bay teacher hiring market. (RT036–037.)

The trial court also defended the District's long-term use of substitutes since they are "teachers who are provisionally qualified who at least are there giving the kids some modicum of education." (RT037.) The court did not address the fact that both the Legislature and the CTC have determined substitutes are categorically not qualified to give students a minimally competent education beyond 30/60 days. (RT037.) Nonetheless, on this basis, the trial court denied the petition for a writ of mandate pertaining to teacher vacancies. (RT037.) A minute order confirming the ruling followed the same day. (2 AA343.)

3. Motion for New Trial on Teacher Vacancy Issues

Appellants believed that the trial court's ruling was based on accepting two fundamental mistakes of law advanced by the District: (i) that an "impossibility" defense exists to the mandates of the Education Code and (ii) that the District was legally precluded from involuntary reassignments due to the MOU with the teachers union. Appellants thus moved for a new trial, under Code of Civil Procedure sections 657 and 659, on December 23, 2024. In support of their motion, Appellants argued that the trial court made a legal error in assuming that there is an "impossibility" defense to the teacher certification and *Williams* statutory regimes, that it is the province of the state agencies to grant waivers where certificated teachers cannot be found, and that the District had misrepresented its own legal capacity to reassign teachers without consent under its agreement with the teachers union. (2 AA352.)

Appellants provided a declaration from the Executive Director of the CTC explaining the legal regime governing teacher certification, including the requirement to seek and obtain a waiver so that the CTC can assess the legitimacy of a

district's claim of hardship. (2 AA365–371.) The Executive Director explained that "[w]hen a district, such as WCCUSD in this instance, refuses to test its hardship conclusions before the Commission by seeking a waiver … the Commission's authority and expertise in upholding minimum teacher quality standards are evaded and usurped." (2 AA371.) The Executive Director also explained the "chaos" that would ensue "if districts were to unilaterally decide when they could relieve themselves of the general requirement to assign only certified individuals" to teaching positions for the long term. (2 AA369.)

In support of its motion, Appellants also attached a declaration from the Executive Director of the local teachers union, which explained that the MOU did not preclude the District from making involuntarily transfers of teachers to fill vacancies. (2 AA372.) The declaration explained that the District had in fact made dozens of involuntary transfers in the past two years. (2 AA373–374.)

In response, the District conceded that, contrary to its earlier position, the MOU with the teachers union did not prohibit involuntary transfers of teachers. (2 AA446.) In other words, the District admitted that there was no contractual

obstacle to reassigning teachers involuntarily to fill vacancies. Indeed, it became clear during the rehearing proceedings that the District effectuated 20 involuntary transfers within three months of persuading the trial court to deny the writ petition based on the supposed impossibility of such transfers. (2 AA373–74; 2 AA447.)

Notwithstanding these revelations, the trial court denied Appellants' motion for new trial on April 15, 2025. (2 AA488.) The Court faulted Appellants for failing to come forward with "newly discovered evidence" that "could not have been produced at the hearing" on the merits. (2 AA492.) The trial court further found, with no elaboration or reasoning, that there was no "error of law" in the ruling denying the writ petition. (*Ibid.*)

This appeal followed. On June 16, 2025, this Court granted Appellants' motion to expedite briefing and granted calendar preference for this appeal.

III. STANDARD OF REVIEW

The trial court's denial of Appellants' petition for writ of mandate should be reviewed de novo because it was based on an error of law regarding the availability of an "impossibility defense" to the District's statutory duties. (*See Sutter's Place,*

Inc. v. California Gambling Control Com. (2024) 101 Cal.App.5th 818, 832, as mod. (Apr. 30, 2024), review den. (Aug. 14, 2024).)

A de novo review standard should apply also to the trial court's erroneous conclusion that the District had established it was impossible to comply with the Education Code. A "mixed question of law and fact," is subject to "the de novo standard of review" if the issue "is predominantly legal." (*People v. Aguilera* (2020) 50 Cal.App.5th 894, 908.) The trial court's conclusion about the District's evidence of impossibility requires a detailed legal analysis of state certification laws, the *Williams* statute, and the District's ability to involuntarily transfer teachers under the contract with the teachers union.

In reviewing the trial court's denial of the writ of mandate, the Court should take into account the evidence and legal arguments presented in connection with the motion for new trial. (Cf. *Reyes v. Kruger* (2020) 55 Cal.App.5th 58, 71, as mod. on den. of reh'g (Oct. 21, 2020) ["It is well-settled that an order denying a motion for new trial, while not directly appealable, may be reviewed on appeal from the underlying judgment."].)

IV. ARGUMENT

A. The Trial Court Erred in Denying the Writ Based on the Purported "Impossibility" of the District's Compliance.

The District has never contested that it is in violation of the Education Code. Specifically, the District concedes that it has not assigned a designated, year-long, certificated teacher to each of the classrooms at issue in the petition. Instead, the District relies on unauthorized substitute teachers to cover vacant classrooms, in violation of teacher credentialing and *Williams* obligations. The trial court's sole basis for excusing the District's violations was that compliance is impossible. That conclusion was in error on multiple levels. Most importantly, the statutory regimes at issue here do not allow for an "impossibility" defense. To the contrary, they contemplate that a district must present its case for hardship to a supervising agency, either the CTC or the SBE. In any event, the District has woefully failed to meet its burden of showing impossibility in this case.

1. It Is Undisputed That the District Is Illegally Denying Students Access to Certificated Teachers.

The District has not contested that some of its classrooms at Stege, Helms, and Kennedy lack a lawfully certificated, year-

long teacher as mandated by California law and that its policy and practice is to use substitutes teaching beyond their authorizations for those vacancies. Nor has the District contested that it declined to remedy the teachers' complaints about the illegal vacancies, as required by the *Williams* statute. The District also has not contested that the affected children are suffering serious harm from being denied a meaningful education by a qualified teacher. The harm to the children is permanent and ongoing, as is the harm to the State.

(a) The District uses uncertified substitutes in some classrooms, even though the practice has long been illegal.

As explained, *supra* at 17, the Legislature has mandated that only "certificated" persons should teach in the State's public schools—i.e., those who are authorized by the Education Code to teach in public school classrooms. (Ed. Code §§ 44259; 44830; see also *Tarquinio v. Franklin-Mckinley School Dist.* (1979) 88 Cal.App.3d 832, 835 ["The Education Code restricts employment by local boards to teachers holding current credentials."].) This has been the law for over 60 years. (See, e.g., Ed. Code § 44065(a)(1).) Where a "fully prepared" teacher (i.e., one who has completed a "teacher preparation program," Ed. Code

§ 44225.7(e)) is not available, the Legislature has authorized various alternatives, such as interns, candidates close to completing their preliminary credentials, local designation of teachers on special assignment, emergency-style permits, or, as a last resort, authorization through a waiver from the CTC. Whichever option the school district chooses to adopt, students are entitled to have a single, state-authorized teacher for the entire school year. (Ed. Code § 35186(h)(3).) Substitutes cannot legally fill that role, because they are authorized to teach in a classroom for no more than 30 days (60 days for "career" substitutes). (Cal. Code Regs., Tit. 5, §§ 80025(a); 80025.1.)

Despite the clear mandate of California law, the District has failed for years to assign a year-long, certificated teacher to each classroom at Stege, Helms, and Kennedy—schools with among the highest rates of poverty in the District. The District has instead assigned substitutes long past their 30-day limits, assigned a series of so-called "rolling substitutes," or even required other teachers to take turns covering the teacher vacancies. The District has not obtained (or even *sought*) waivers from the CTC or the SBE to remedy the unlawful vacancies in these classrooms. (2 AA445.) None of this is contested. Nor does

the District contest that its this particular violation of the fundamental requirements of the Education Code and the fundamental right of students to a meaningful education (*Serrano, supra,* 5 Cal.3d at pp. 608–609) has thus gone uncorrected for many years. This is not contested.

(b) The District violated its statutory duty to remedy complaints about the teacher vacancies.

The need for a single, designated, certificated teacher to be assigned for the entire year to each classroom is so fundamental and important to public education, that the Legislature adopted the fast-track *Williams* complaint process to address (among other things) complaints about teacher vacancies. (See Ed. Code § 35186.) The statute mandates that the school district "*shall remedy* a valid complaint" about a teacher vacancy within 30 working days. (*Id.* § (b), italics added.) The statute provides no exceptions or alternatives for a district other than immediate compliance.

It is undisputed here that the District declined to comply with the *Williams* regime. On January 31, 2024, Appellants filed *Williams* complaints regarding 12 vacancies at Stege, Helms, and Kennedy, schools that have been plagued for many years with

unlawful teacher vacancies. When the District responded to the Williams complaints on April 10, 2024, it admitted that the complaints were valid: "The District acknowledges it is out of compliance … [and] has utilized long-term and day-to-day substitutes" in lieu of "permanent teachers." (1 AA071.)

Nonetheless, the District insisted that it would continue to rely on substitutes rather than remedy the situation. The District claimed it did not have to take any further specific actions to remedy the valid vacancies due to a "statewide teacher shortage." (1 AA153.)

Once this suit was filed, however, the District suddenly managed to redress 9 of the 12 vacancies, 3 by cancelling the classes and 6 by assigning a mix of fully credentialed teachers (including a formerly retired teacher) and other temporarily permitted teachers under the Education Code. (1 AA030–031.)

Despite these post-lawsuit efforts, at least three vacancies remain, eighteen months after the *Williams* complaints were filed. (2 AA 388–93; 2 AA444–45.) The District continues to utilize substitutes beyond their 30-day authorization, with no year-long teacher of record assigned to the classrooms, despite the undisputed illegality of the practice. Many children at these

schools continue to lack a certificated, year-long teacher and are therefore denied the minimum quality of educational instruction mandated by the Legislature.

(c) The District's duties to provide qualified teachers and to remedy Williams complaints are mandatory, not discretionary.

The District has tried to avoid complying with the law by arguing that the Education Code's mandates are merely discretionary and not mandatory duties. But both the teacher certification statutes and the *Williams* statute use the term "shall." (E.g., Ed. Code § 44830 [districts "*shall* employ" "only persons who possess the qualifications for" credentialed positions, (italics added)]; Cal. Code Regs., Tit 5., § 80025(b); Cal. Code Regs., Tit. 5, § 80025.1(c); Ed. Code § 35186 [districts "*shall* remedy a valid complaint" in a period "not to exceed 30 working days from the date the complaint was received"] (italics added).)

The Legislature's use of the word "shall" signals that districts "d[o] not have discretion to disregard" these duties. *(HNHPC, Inc. v. Dept. of Cannabis Control* (2023) 94 Cal.App.5th 60, 70.) "It is a well-settled principle of statutory construction

that . . . 'shall' is ordinarily construed as mandatory." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443.)

Moreover, the Legislature has adopted a complex regulatory regime regarding teacher certification (Ed. Code §§ 44830 et seq.) with a supervising agency to implement the regime, the CTC. (Ed. Code. § 44202.) It would be absurd for the Legislature to adopt such a complex regime governed by an expert agency for a discretionary duty that school districts are free to ignore.

To be sure, both the certification requirement and the *Williams* process give the District discretion in *how* to fulfill its obligations, but that does not mean either that the District is free to violate these provisions or that the Courts are powerless to require compliance. While the Court might decline to order the District to comply in a specific way (e.g., reassigning particular individuals), the Court can still require that the District comply with the law, within the District's zone of discretion.

Doe v. Albany Unified School Dist. (2010) 190 Cal.App.4th 668, 673 is instructive on this point. The statute at issue (Education Code section 51210) stated that school districts "shall" provide physical education of at least 200 minutes per 10 school

days. The statute provided school districts broad discretion, however, in how to comply with that mandate. Schools could decide, for example, on which activities "may be conducive to health and vigor of body and mind" based on local needs and requirements. Given the flexibility and discretion given to districts, the trial court held the statutory duty discretionary, rather than mandatory, and declined to issue a writ against a non-complying district. The Court of Appeal reversed, noting that the statute used the term "shall" and that the Legislature had set minimum requirements for physical education. Those aspects of the statute were thus mandatory and should be enforced through a writ of mandate—even if the precise form of compliance was left to the district.

Just so here. While the District may have broad discretion in deciding who to hire, who to assign to each classroom, when to seek waivers, and how to manage its budget, the Legislature has set requirements on the qualifications of teachers, specified a hiring hierarchy for filling vacancies, and mandated a 30-day timeline for remedying teacher vacancies. The specific requirements spelled out in the statutory regime as something districts "shall" do are mandatory duties that the courts are fully

empowered to enforce. The District can be ordered to comply with the law, even if it retains discretion over the manner of lawful compliance. As the Court of Appeal has explained, "[w]hile a party may not invoke mandamus to force a public entity to exercise discretionary powers in any particular manner . . . mandate is available to compel the exercise of those discretionary powers in some way." (*Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 205; see also *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1174 ["[W]hile the department and its personnel have a ministerial duty to conduct some sort of investigation into every citizen's complaint, the procedure leaves it to the discretion of the department and its personnel to determine what kind of investigation is reasonably necessary in each case." Italics revised].)

2. There Is No "Impossibility" Defense to the Teacher Certification and *Williams* Regimes.

The trial court denied the motion for a writ of mandate based on the District's representation that it was impossible for it to comply with the law. (RT058:18–21; see also RT010:19–21 ["I pretty much agree with the school district that the -- what petitioners are asking is not really within the ability of the school

district to fulfill."].) The motion for a new trial was denied on the same grounds. (2 AA492 [finding no "error of law" in the original decision to deny the petition for writ of mandate].) But there is no impossibility defense to the teacher certification and *Williams* statutory regimes.

The law does not generally recognize an impossibility defense for statutory duties. While Civil Code section 3531 restates the aphorism that "the law never requires impossibilities," the Supreme Court has explained that this is merely "an interpretative canon for construing statutes" in accordance with the Legislature's intent, "not a means for invalidating them." (*Nat. Shooting Sports Found., Inc. v. State* (2018) 5 Cal.5th 428, 433.) Thus, if "[n]either the text nor the purpose of the [statute] contemplates [] a showing of impossibility," courts lack the power to "independently carve out exceptions for impossibility." (*Id.* at p. 436.)

An impossibility defense must be rooted in "an underlying legislative intent" to provide an exception to the statute. (*Id.* at p. 433.) Absent evidence of such intent, there is no impossibility defense to statutory mandates. (*Bd. of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 301, reh'g den. and opn. mod. (Apr.

30, 1990) ["relief from state mandates must come from the legislatures and not from the courts."].)

The statutory regimes at issue here make clear that the Legislature did not intend for school districts to avoid teacher certification requirements by claiming it is too hard to comply. Thus, the trial court erred in adopting the District's impossibility defense.

(a) Neither the purpose nor text of state certification statutes permit an impossibility defense.

There is no indication in the statutory text that the Legislature intended an impossibility defense to the teacher certification regime. "Where, as here, the Legislature has not created an exception, a court may not insert one into the statute." (*Mamer v. Weingarten* (2025) 108 Cal.App.5th 169, 174.) To the contrary, the Education Code's plain language uses the term "*shall*," indicating the mandatory nature of the duties. (Ed. Code § 44830(a).)

Beyond the plain language, courts are required to "construe statutory language in the context of the statutory framework, seeking to discern the statute's underlying purpose and to harmonize its different components." (*Connor v. First Student,*

Inc. (2018) 5 Cal.5th 1026, 1035 [citation].) The statutory framework here strongly militates against an impossibility defense given that the Legislature provided multiple express alternative paths to compliance for districts unable to find a "fully prepared" teacher. (See *supra* 17–19 [listing options].) Those options even include, as a last resort, seeking a waiver from the CTC or the SBE. (See Ed. Code § 44300(a)(3) [allowing the CTC to issue emergency teaching permits, including when a district shows that it has conducted a diligent search for qualified teachers.]; *California Teachers Assn. v. Com. on Teacher Credentialing* (1992) 7 Cal.App.4th 1469, 1477 ["Thus the respondent districts acted properly in submitting Statements of Need to the Commission and the Commission acted properly in issuing emergency credentials to persons hired by the districts."].)

The Legislature has thus anticipated that school districts might sometimes struggle to find certificated teachers, and rather than an impossibility defense, the Legislature provided numerous mechanisms to address such situations working within the certification system, thereby preserving state oversight. There would be no need for all these options if a school district

could simply claim it was impossible to comply. Under the rule of *expressio unius est exlcusio alterius*, when "exceptions to a general rule are specified by statute, other exceptions are not to be presumed unless a contrary legislative intent can be discerned." (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1045, as mod. (June 9, 2004); *George v. Susanville Elementary School Dist.* (2024) 103 Cal.App.5th 349, 357 ["The uniformity requirement does not include an exception for teachers restored pursuant to the restoration requirement, indicating the Legislature did not intend for such an exception to exist."].)

The Legislature's intention that every classroom be staffed with a teacher authorized in one way or another by the state's certification laws is reinforced by provisions of the state's school funding system. The Legislature has specified that school funding is provided only for instructional activities occurring "under the immediate supervision and control of an employee of the district . . . *who possessed a valid certification document*, registered as required by law." (Ed. Code § 46300(a) [italics added].) Education Code section 45037(c) further fiscally penalizes county offices of education that pay salaries to teachers

the county knew or could have known were uncertified. These provisions show that the Legislature has zero tolerance for a District's failure to staff classrooms with qualified personnel, so much so that the Legislature imposes fiscal penalties for failing to do so, regardless of a District's intent or effort.

(b) Neither the purpose nor text of the Williams statute permit an impossibility defense.

Similarly, there is no indication in the language of the *Williams* statute that the Legislature intended courts to excuse compliance based on claims of impossibility. Education Code section 35186 created a special mechanism for parents and teachers to enforce a district's duty to fill teacher vacancies with a "single designated certificated employee" "for an entire year." (Ed. Code § 35186(i)(3).) The statute mandates not only that school districts remedy all such vacancies without any mention of any exception but also that the school district do so almost immediately. (Ed. Code § 35186(b), (f)(2), (i)(3) [a district "shall remedy" a complaint related to a teacher vacancy no later than "30 working days."].) A duty stated in such uncompromising terms, with such an aggressive timeline, does not indicate a desire for exceptions.

Again, beyond the plain language the court should look to "the statutory framework, seeking to discern the statute's underlying purpose and to harmonize its different components." (*Connor*, *supra*, 5 Cal.5th at p. 1035 [citation].) The Legislature based the *Williams* statute on the pre-existing Uniform Complaint Procedure (UCP) in the Education Code. (Ed. Code § 33315; Cal. Code. Regs., Tit. 5, §§ 4600–4694.) But the Legislature tightened the UCP process for *Williams* complaints, requiring valid complaints to be remedied in just 30 days, even before a district is required to respond to the *Williams* complainants (which must happen within 45 working days). The Legislature's decision to adopt a new, stricter, fast-tracked process for remedying teacher vacancies is again inconsistent with an intent to include exceptions—especially given the numerous options discussed above for districts to comply with the teacher certification requirements.

In interpreting a statute, the Court must also look to the underlying purpose of a statutory enactment. (*People v. Super. Ct. of Cnty. of Los Angeles* (2021) 67 Cal.App.5th Supp. 1, 5.) Here, as explained above, the *Williams* statute was enacted as part of a settlement establishing three inviolate rights for all

California public-school students: adequate instructional materials, safe facilities, and a permanent, certificated teacher in every classroom. (Ed. Code § 35186(a). It would be inconsistent with this legislative history to assume that the Legislature intended to create exceptions to these rights.

The plain language of Section 35186, along with the statutory context and the purpose for which *Williams* was enacted, make clear that the Legislature did not intend to permit courts to grant an exception for impossibility.

(c) An "Impossibility" Defense Would Conflict with the Waiver Authority Given to the CTC and SBE.

An impossibility defense would not only be inconsistent with the statutory text, but it would also be inconsistent with the authority that the Legislature gave to two expert agencies—CTC and the SBE—to grant waivers from requirements of the Education Code and from the teacher certification requirements. As explained above, if a "fully prepared" teacher cannot be found, and no alternative option for finding a certificated teacher is available (e.g., intern, emergency permit, etc.), then a district can apply to the CTC for a waiver of the certification requirements. Education Code section 44225 grants the CTC broad authority to

"provide [] temporary exemptions when deemed appropriate to the commission." (Ed. Code § 44225(m)(1)(E).) The Executive Director of the CTC, Dr. Mary Sandy, has confirmed that the CTC's waiver authority is broad, allowing the CTC to take into account unique challenges that districts might face while still upholding the goals of state certification law. (2 A369.)[3] Dr. Sandy confirmed that other districts avail themselves of these options when needed, as "[c]ommission staff process thousands of waiver requests each year." (2 AA370; see also 1 AA194.) The *Williams* vacancy remedy and timeline are also subject to grants of waivers by the SBE. (Ed. Code §§ 33050–33053 [granting SBE broad power to waive any provision of Education code].)

The Legislature's decision to authorize expert agencies to provide waivers is inconsistent with an intent to create a separate impossibility defense determined by the courts. The entire point of the waiver system, after all, is for the *expert agencies* to determine when compliance is too difficult and should be excused. Thus, not only is an impossibility defense

[3] Dr. Sandy has served as Executive Director of the CTC since 2011, supervises educator preparation and licensing, and guides the agency in its issuance of over 300,000 credential documents annually. (2 AA366.)

unnecessary, but it would also usurp the role of the agencies. The proposed impossibility defense would create a loophole to allow districts to bypass agency review and evade state oversight. (Cf. 2 AA369; 2 AA371 [explaining the threat of usurping CTC authority and of creating chaos in teacher assignments].) It is not for courts to evaluate whether qualified teachers are available; the Legislature has determined that the policy decision as to whether to excuse school district compliance with the Education Code should be made by these agencies, which have a comprehensive view of issues across the State and across each district. (Cf. *In re Cabrera* (2012) 55 Cal.4th 683, 688 ["[T]he substitution of the judgment of a court for that of the administrator in quasi-legislative matters would effectuate neither the legislative mandate nor sound social policy."].)

The CTC and SBE possess technical expertise, knowledge, and data that the courts do not have. The CTC, for example, reviews thousands of waiver requests from districts across the state and collects and analyzes data about teacher credentialing, including publishing annual reports on the supply of teachers across the state. (Commission on Teacher Credentialing, *Commission at a Glance* (June 10, 2025),

<https://tinyurl.com/f5x23tfs> [as of June 25, 2025].) The CTC is thus uniquely well situated to determine if districts can hire qualified teachers.

The SBE is not only responsible for governing the state's entire K-12 education system, but also maintains and analyzes a wealth of data about districts across the state, including data about the number of certificated staff and new hires. (California State Board of Education, *SBE Responsibilities* (July 3, 2023), <https://tinyurl.com/4mn4vj9c> [as of June 25, 2025].)

Both the CTC and SBE are also staffed by subject matter experts in education; the nineteen-member CTC is comprised of educators, school administrators, and other education professionals, including one higher education faculty member from an institution for teacher education. (Commission on Teacher Credentialing, *About the Commission* (June 11, 2025), <https://tinyurl.com/4hzw6kkd> [as of June 25, 2025].) The SBE is helmed by one of the nation's foremost education scholars —Dr. Linda Darling-Hammond—and the SBE office also employs numerous education policy experts, program analysts, and administrators. (California State Board of Education, *SBE Staff* (Mar. 10, 2025), <https://tinyurl.com/59554h7m> [as of June 25,

2025].) Because the courts have no particular expertise in this subject area, they should "extend appropriate deference to [] administrative agencies . . . and their technical expertise" by requiring school districts to apply to the CTC or SBE for a waiver, rather than adopting a judge-made impossibility defense. (*Communities for a Better Env't v. State Water Res. Control Bd.* (2003) 109 Cal.App.4th 1089, 1103–1104.)

This case provides a good example of the danger of courts usurping expert agency authority. The trial court relied not on experts or data to conclude that it was impossible for the District to assign qualified teachers but on its own observations about teacher shortages going back 50 years. (RT035 ["The shortage of teachers, both credentialed and substitute teachers, is nothing new. I mean, I moved to California in 1973, and in 1973 there was a shortage of teachers. This is chronic. It is not something that has all of a sudden became [sic] an issue."].) The trial court also relied on a litany of other personal observations outside of the record. (RT035–036 ["You know, the few teachers that are coming out of credential programs, most of them unfortunately want to teach in places like Lafayette and San Ramon and Moraga and Orinda. They don't want to teach in Richmond."].)

This is not the kind of evidence or analysis on which a decision should be made as to whether a district can be excused from providing certificated teachers to its students.

Whether students can be denied a certificated teacher raises not only significant questions about teacher availability but also important policy questions for the State. The CTC has the expertise and experience to resolve those questions, not the courts. Under the regulatory regime established by the Legislature, it is the CTC's analysis and expertise regarding the challenges of teacher vacancies that should control, not the opinions of an individual trial court.

3. The District Failed to Carry Its Burden to Show Impossibility In Any Event.

Even assuming, incorrectly, that the Legislature intended to include an impossibility defense in the teacher credentialing and *Williams* statutory regimes, the District failed to carry its burden to show that compliance was impossible here.

As the party asserting impossibility, the District bore the burden of proof for its impossibility defense. (See *Majestic Asset Mgmt. LLC v. The Colony at California Oaks Homeowners Assn.* (2024) 107 Cal.App.5th 413, 427, review den. (Mar. 12, 2025).)

The District was required to meet the high bar of showing that compliance was either "strict[ly] impossible" or was so impractical "because of *extreme* and unreasonable difficulty, expense, injury, or loss involved." (*Ibid.* [italics added].) But all the District offered were misstatements of the law and unsubstantiated assertions, which were easily rebutted with actual evidence from Appellants.

Even if there were a teacher shortage, that would not make it impossible to fill the vacancies at issue because the Education Code provides numerous, viable alternatives to fill the vacancies legally, as explained at length above. For example, the District could have reassigned fully credentialed teachers in other subject areas to the vacant classrooms as teachers on special assignment. (Ed. Code §§ 44258.3, 35035.) The District could also have filled the vacancies by involuntarily reassigning credentialed teachers who were in non-classroom or administrative positions—as the District did here with approximately 70 fully credentialed teachers over the last two years. (2 AA373–74; 2 AA481; 2 AA447.) For example, Appellants showed that another large school district, Los Angeles Unified, reassigned some 700

teachers from non-classroom roles to address vacancies. (1 AA191; 1 AA247.)

The District's response was to insist that its MOU with the teachers union forbade involuntary reassignments, and to make the conclusory statement that there were not enough certificated teachers on other assignments to fill the three remaining vacancies at Stege, Helms, and Kennedy. (1 AA155.) The trial court accepted these representations. (See RT037:5–12 [The Court: "you've got the issue of unions. . . They have rights under the MOUs. The school district is not free to just say, 'Hey, you with your math and science background, you're going to go teach at Helms.' They don't have the right to do that."].) But as the District later admitted in this case, those representations were false. (2 AA351.) The District's witness, Dr. Camille Johnson (Superintendent of Human Resources), acknowledged under oath that the District does in fact reassign certificated teachers even involuntarily. (2 AA446.) The Executive Director of the local teachers union confirmed that involuntary transfers are permitted under the MOU with the District. (2 AA373.)

The evidence showed that the District not only has the ability to involuntarily reassign teachers, but that it routinely

employs that power. (1 AA191; 1 AA239–246.) For instance, Appellants submitted letters from the District notifying teachers and administrators of involuntary reassignment. In fact, in the 2023-2024 and 2024-2025 school year alone, the District involuntarily transferred approximately 50 teachers. (2 AA373.) It strains credulity to find that using involuntary reassignments to fill three vacancies was impossible, when the District used 50 reassignments in the past two school years.

But even if that were the case, there still would be no impossibility in complying with the law because the District could have pursued waivers from the CTC. The District insisted, in the most conclusory fashion, that it could not seek waivers because it had no candidates that would qualify for variable term waivers. But the CTC's waiver authority is not limited to variable term waivers. The CTC has broad authority under Education Code section 44225(m) to issue waivers even where the requirements for a standard variable term waiver are not met. (1 AA193; 2 AA369, 2 AA370.) Therefore, as with reassignments, the undisputed evidence shows that the District had a lawful option to seek waivers for the vacancies at issue, after exhausting all other avenues.

The record here closely mirrors that of *Board of Supervisors v. McMahon*, in which the court held that the County's testimony "demonstrates no literal impossibility of County funding for the [] program at the heart of the dispute." (*McMahon*, *supra*, 219 Cal.App.3d at p. 300.) Similarly, here, there is no evidence of literal impossibility—or extreme or unreasonable difficulty. The evidence shows that dozens of fully credentialed teachers are available to transfer and, after that, the District still has the option to seek a waiver from the CTC or the SBE.

Just as the County in *McMahon* did "not demonstrate[] that it has exhausted its ability to raise revenues or deliver services differently" (*id.* at p. 303), here, the District has not put forth evidence that it has exhausted the available options to comply with its duties under the Education Code.

4. The Trial Court Also Erred in Accepting The District's Impossibility Defense in The Motion for New Trial.

The lower court also erred in denying the motion for a new trial. Appellants' motion for a new trial focused on the trial court's legal error in accepting the District's impossibility defense. (2 AA344.) The motion for new trial explained that the

trial court erred in assuming that there is an "impossibility" defense to the teacher credentialing and *Williams* statutory regimes, that it is the province of the state expert agencies (the CTC and SBE) to grant waivers where fully qualified teachers cannot be found, and that the District had misrepresented the legal capacity of the District to reassign educators without consent and the effect of the MOU with the teachers union. (2 AA352.) Each of these legal errors was a sufficient basis for a new trial.

In its order denying the motion for the new trial, the Superior Court failed to address these legal errors. (See 2 AA492.) Instead, the Superior Court focused on declarations submitted by Appellants from (i) Dr. Mary Sandy, Executive Director of the CTC, which addressed waivers under the Education Code, and (ii) Mark Mitchell, Executive Director of the local teachers union, which addressed the District's legal ability to involuntarily transfer teachers under the MOU with the union. The Superior Court held that this so-called "new evidence" was improper and denied the motion largely based on the conclusion that Appellants could have submitted these declarations earlier. What the Superior Court failed to appreciate, however, is that

these declarations focused on *legal* issues–the law governing waivers under the Education Code and the contractual language of the MOU. That they were styled as "declarations" does not change the fact that Appellants' motion and supporting submissions focused on legal errors in the original trial court opinion–the same legal errors addressed above.

Accordingly, both of the Superior Court's orders—the order denying the writ petition and the order denying the motion for new trial—were in error because both orders wrongly relied on the District's impossibility defense, which is both contrary to law and the evidence presented.

B. This Court Should Reverse and Remand with Instructions to Grant the Writ Petition In Order to Prevent Further Harm to Students.

This Court should reverse the existing judgment and order the trial court to grant the petition for a writ of mandate. Where, as here, a case "involves legal issues rather than factual disputes," the Court of Appeal "make[s] [its] own determination about the law." (*San Diego Pub. Libr. Found. v. Fuentes* (2025) 111 Cal.App.5th 711.) Indeed, the Court of Appeal routinely grants relief on writ petitions when it finds that the lower court erred in denying the petition in the first instance. (See, e.g.,

Galzinski, *supra*, 2 Cal.App.5th at p. 1177 [reversing "with directions to enter a new judgment granting Galzinski's petition for a writ of mandate"]; *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 289, as mod. on den. of reh'g (Aug. 12, 2022) [reversing and "remand[ing]to the trial court with instructions to issue a writ of mandate . . . ."].) Appellants are similarly entitled to relief on their writ petition here.

Immediate relief is also warranted to avoid further, ongoing harm to students in WCCUSD—and potentially to other students across the state. The District's decision to deprive students of certificated teachers is not only illegal and harmful, but also sets a dangerous precedent. As the Executive Director of the CTC explained in the trial court proceedings below, allowing the decision below to stand and permitting districts to deny children an authorized teacher whenever it seems "too hard" to find one would threaten the entire system of public education in California, especially for the most vulnerable children. (2 AA369; 2 AA370–371.)

Having an authorized teacher in every classroom is foundational to a meaningful public education system and essential to safeguard students' fundamental right to an

education that will prepare them for success in the workforce, as engaged democratic citizens and as productive members of society. (*Serrano*, *supra*, at p. 606.) Substitutes are not authorized to be in the classroom for an extended period precisely because they lack the necessary preparation qualifications.

The harm to children caused by inexperienced or untrained individuals in classrooms is well established and not subject to reasonable dispute. Scholars have found that "teacher qualifications are the most important school-related predictors of student achievement."[4] Teacher preparedness is a key factor in student achievement, with underprepared teachers significantly associated with reduced student performance.[5] Researchers have found that substitutes are, in general, less effective in promoting student learning and social connections.[6] "[S]ubstitutes' lack of

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[4] (Anne Podolsky, Linda Darling-Hammond et al., *California's Positive Outliers: Districts Beating the Odds*, (May 2019) p. 4, Learning Policy Institute <https://tinyurl.com/3kjescut> [as of June 23, 2025]; *see also* Borgen, N.T., Markussen, S., & Raaum, O. (2024). Socioeconomic differences in the long-term effects of teacher absence on student outcomes. *European Societies*; 26 (3): 639–667.

[5] *Ibid.*

[6] Herrmann, M. A., & Rockoff, J. E. (2012). Worker absence and productivity: evidence from teaching. *J. Labor Econ.* 30, 749–782.

detailed knowledge of students' skill levels makes it difficult for them to provide differentiated instruction that addresses the needs of individual students."[7]

The lack of a certificated teacher—one that is authorized by the Education Code—particularly affects the most vulnerable students: English Learners and students with disabilities. "For these pupils to have access to quality education, their special needs must be met by teachers who have essential skills and knowledge related to English language development." (*Governing Bd. of Ripon Unified School Dist. v. Com. on Professional Competence* (2009) 177 Cal.App.4th 1379, 1387.) Notably, the *Williams* statute requires that teachers in classrooms with English Learners possess the appropriate certifications or training for such students. (-Ed. Code. § 35186(f)(2)(B).).

The Supreme Court has held that the "loss of *six weeks* of instruction would cause serious, irreparable harm to … students and would deny them their 'fundamental right to an effective

[7] Miller, R.T., Murnane, R.J., & Willett, J.B. (2008). Do Teacher Absences Impact Student Achievement? Longitudinal Evidence from One Urban School District. Educational Evaluation and Policy Analysis 30.

public education' under the California Constitution." (*Butt v. State of California* (1992) 4Cal.4th 668, 674 [italics added].) In this case, entire classrooms have lacked a certificated teacher for two or more years, including 18 months since the *Williams* complaints here were filed. The loss in education for those students is profound in terms of material they did not learn, social skills they did not develop, and the sense of self-worth they lost from being denied a teacher by their school district.

This crisis should not be permitted to continue for yet another school year. Moreover, if other school districts start to conclude that they need not comply with state certification laws or the *Williams* remedial regime, it could substantially degrade public education in California. Districts could fill teacher vacancies with anyone they choose—even individuals who lack a Bachelor's or high school degree. This is precisely the result the Legislature sought to avoid with the teacher credentialing scheme. The District should be required to comply with the law for the good of the students at issue and the California public education system.

V. CONCLUSION

Appellants respectfully request that the Court of Appeal reverse the trial court's orders, with instructions to issue a writ of mandate directing the District to follow state certification laws and to remedy *Williams* teacher vacancy complaints as required by Section 35186, including the teacher vacancies at Stege Elementary School, Helms Middle School, and Kennedy High School, and further to halt the ongoing practice of assigning substitutes to teach in the same classroom beyond their authorized 30- or 60-day period.

DATED: June 25, 2025

By: *s/ John T. Affeldt*
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CERTIFICATE OF WORD COUNT COMPLIANCE

In accordance with California Rules of Court, rule 8.204(c), I hereby certify that this brief contains 12,841 words as established by the word count of the computer program (Microsoft Word) used for preparation of this brief. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 13-point size Century Schoolbook font.

s/ Rohit K. Singla

PROOF OF SERVICE

SAM CLEARE, et al. v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT. et al.
California Court of Appeals, First Appellate District, Division Two, Case No. A173289

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On June 25, 2025, I served true copies of the following document(s) described as on the interested parties in this action as follows:

1. **APPELLANTS' OPENING BRIEF**
2. **APPELLANTS' APPENDIX VOLUME 1**
3. **APPELLANTS' APPENDIX VOLUME 2**

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. At the time of filing, I electronically served participants in the case who were registered TrueFiling users via the TrueFiling system. Participants in the case who were not registered TrueFiling users were served by mail or by other means permitted by the court rules, as indicated below:

Katherine A. Alberts **Leone Alberts & Duus** 1390 Willow Pass Rd., Ste. 700 Concord, CA 94520 Ph: (925) 974-8600, ext. 117 Fax (925) 974-8601 Email: kalberts@leonealberts.com service@leonealberts.com	*Attorneys for Respondents West Contra Costa Unified School District, Kenneth Chris Hurst, West Contra Costa Unified School District Board Of Education, Jamela Smith-Folds, Demetrio Gonzalez Hoy, Otheree Christian, Mister Phillips, And Leslie Reckler*

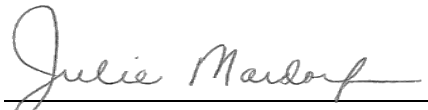
BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in

the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid as indicated below:

Clerk of the Superior Court for the State of California,
County of Contra Costa
The Honorable Benjamin T. Reyes II
Hon. Terri Mockler
Department 16
725 Court Street
Martinez, CA 94553

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 25, 2025, at Los Angeles, California.



Julie Mardorf